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SENSITIVE: LAW ENFORCEMENT

**Topic** | Outcomes of the investigation into a complaint by Lock the Gate Alliance alleging unlawful surface water capture at the Maules Creek Coal Mine (Mine)

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**Key Findings of the Investigation**

There are reasonable grounds to allege that the Mine has unlawfully taken surface water by relying on an inapplicable water licensing exemption under the *Water Management (General) Regulation 2018* (WM Regulation).

Our investigation has determined the mine has intercepted **major streams** in a number of ways including:

- Failing to build 3 of the 6 required dams (none now exist)
- Not diverting or releasing clean water around the mine
- Using rainfall runoff collected from storages located on these major streams.

As a result, the mine does not have sufficient entitlements on its surface water access licence on the unregulated system to cover the water previously claimed as exempt. In addition, the licence limits water take to a single dam using a single surface water pump.

The mine is also taking water in excess of its harvestable rights entitlements.

The activities at the mine appear to deviate from existing planning approvals, which also raises potential compliance issues for DPIE - Planning.

*Relevant exemption*

The investigation focused on whether the Mine is validly applying a water licensing exemption available under the WM Regulation. An exemption exists to landholders in relation to taking of water from a range of excluded works that are located on a **minor stream**.

Minor streams are defined in the WM Regulation and also in accordance with hydroline spatial data published on the Department's website.

We find that over three water years the Mine captured water on mapped **major streams** outside the provisions of the exemption claimed by the Mine. We determine the volumes alleged to have been taken during each year are:

	WY16/17	WY17/18	WY18/19
Total ML	2289.1	668.9	864.1

### *Proposed actions:*

In response to the findings of the investigation, NRAR will:

- Formally advise the Mine of the findings of our investigation and seek from them their response within a fortnight.
- Consider further legal advice on whether to commence civil and/or criminal proceedings to remedy the non-compliance.
- Issue a draft direction under section 326 of the WM Act to the Mine to require water meters where there are deficiencies in measuring and recording mine water flows around the Mine.
- Request the Mine address when and how it will comply with the WM Act; either by modifying water management on site or obtaining the necessary additional water licences.
- Consider whether licence conditions for the Mine's surface water access licences should be reviewed to ensure the monitoring program is able to accurately account for surface water taken on site.
- Advise DPIE-Planning of the apparent deficiencies in the Mine's approved Water Management Plan and refer compliance issues relating to the alleged failure to comply with relevant conditions of the project approval.
- Refer to DPIE-Water the broader policy issues around how mines capture and re-use surface water under relevant exemptions and the need for clearer guidelines on what is best management practice, and the application of harvestable rights orders.

## **Background**

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The Environmental Defenders Office NSW (EDO) wrote to the NRAR on 7 June 2018 on behalf of Lock the Gate Alliance alleging some coal mines in NSW capture surface water run-off without surface water access licences required by the WM Act and rely on exemptions that are not applicable to their operations.

They raised queries in relation to Schedule 1, clause 3 of the WM Regulation and harvestable right obligations under the Harvestable Rights Order (exempt classes of dam).

Their complaint also raised issues around whether mines are adopting 'best management practice' to prevent contamination of a water source in relation to the dams that do fall within the exemption, which raises broader issues about the need for guidelines or policy reform in this area.

The complainant specifically raised Maules Creek but indicated the issue had wider application to coal mines throughout NSW.

The Mine has two surface water licences as follows:

- A single unregulated river surface water access licence which authorises 30 ML of water to be taken annually from a specific in-river dam on a fourth order stream. No water has been taken pursuant to this licence according to published annual reviews, and the stream was covered by overburden in March 2018 and is no longer in use
- A single regulated river surface water licence authorises the mine to take water up to 3000ML annually from the Namoi River a short distance to the west of the Mine.